



MARY KAY HENRY  
International President

GERRY HUDSON  
International Secretary-Treasurer

NEAL BISNO  
Executive Vice President

LUISA BLUE  
Executive Vice President

HEATHER CONROY  
Executive Vice President

SCOTT COURTNEY  
Executive Vice President

LESLIE FRANE  
Executive Vice President

VALARIE LONG  
Executive Vice President

ROCIO SÁENZ  
Executive Vice President

SERVICE EMPLOYEES  
INTERNATIONAL UNION  
CTW, CLC

1800 Massachusetts Ave., NW  
Washington, DC 20036

202.730.7000

[www.SEIU.org](http://www.SEIU.org)

October 8, 2016

The Honorable Sylvia Matthews Burwell  
Secretary, Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

**RE: Kentucky HEALTH 1115 Waiver Proposal**

Dear Secretary Burwell:

Thank you for the opportunity to submit comments on Kentucky's proposed 1115 demonstration project, "Helping to Engage and Achieve Long Term Health" (HEALTH).

SEIU is the largest healthcare union in the U.S., with more than 1.1 million members in the field, including nurses, doctors, lab technicians, nursing home workers, and home care workers. As the largest property services union, SEIU represents 225,000 members in the building cleaning and security industries, including janitors, security officers, superintendents, maintenance workers, window cleaners, and doormen and women. With more than 1 million local and state government workers, public school employees, bus drivers, and child care providers, SEIU is the second largest public services union.

SEIU was one of the strongest advocates for passage of the Affordable Care Act (ACA), and has actively supported its implementation, including efforts to expand Medicaid in states such as Montana, Pennsylvania, Michigan, Ohio, and New Hampshire. Many of our members provide health services to low-income patients who are enrolled in Medicaid, and other SEIU members and their families receive coverage through the program. While SEIU is pleased that Kentucky has decided to continue to comply with the ACA's Medicaid expansion provisions, we have serious concerns about the HEALTH

proposal, which would move the state from a regular Medicaid expansion under the Affordable Care Act to a newly designed program. Kentucky has made great progress in providing health coverage to formerly uninsured low-income residents of the state, in large part due to the state's implementation of the Medicaid expansion in 2014 – according to a Kaiser Family Foundation analysis, 439,000 people have gained coverage under the expansion and the state's uninsurance rate has been cut by almost two-thirds, falling from 18.8 percent to 6.8 percent. The HEALTH proposal would almost certainly undermine this progress, and also includes changes that could have a negative effect on traditional Medicaid enrollees. I urge you to reject the waiver proposal unless changes are made to address the concerns outlined below.

### **Premiums, Accounts, and Cost-Sharing**

The HEALTH plan would create a new set of benefits for the Medicaid expansion population and some previously eligible beneficiaries that would be linked to two separate health spending accounts, one to cover deductible amounts charged under the plan and the other to cover costs of additional services and health-related costs. The first account would be funded by the state and participants would accrue funds in the second "incentive" account by participating in certain activities and via rollovers of unused funds from the first account to the incentive account. The state also proposes to impose premium payments on all enrollees, including those with incomes under 100 percent of the Federal Poverty Level (FPL).

This proposal to restructure coverage so that it approximates, as the proposal claims, commercial plans and the imposition of premiums on enrollees under 100 percent of FPL are troubling and should be rejected. Extensive research, including research from previous Medicaid demonstration programs, shows that charging premiums significantly reduces the participation of low-income people in health coverage programs.<sup>1</sup> The state's own projections suggest that it expects a decrease in participation during the five-year waiver period. The state would also implement a six-month lock-out period for people with income above the poverty line who don't pay premiums, and would require people with incomes below the poverty line who don't pay premiums to make co-payments for services. The experience in Indiana, whose Medicaid expansion waiver includes a similar provision, has shown that such charges result in lower use of primary and preventive care and make enrollees more likely to seek care in emergency rooms, including for non-emergency services. The proposed creation of a plan with deductibles and linked health savings accounts, which also appears to be modeled on the Indiana waiver, would create an extremely complex system that would add to administrative costs and create further barriers to coverage. In Indiana, most enrollees don't even know about their accounts or

---

<sup>1</sup> Laura Snyder and Robin Rudowitz, "Premiums and Cost-Sharing in Medicaid," Kaiser Commission on Medicaid and the Uninsured, February 2013, <https://kaiserfamilyfoundation.files.wordpress.com/2013/02/8416.pdf>

understand how they work, and so the roll-over from one account to another did not work as an incentive. Moreover, the design of the incentive account penalizes people with health problems who need more than \$500 in care during the year and who would thus not qualify for the rollover.

### **Eligibility and Open Enrollment Periods**

Kentucky proposes to eliminate retroactive coverage for most adults and instead would require payment of premiums before coverage could start. Individuals with incomes below the poverty line who did not pay the premium would be able to receive coverage after a 60-day period with no coverage, while people with incomes above the poverty line would not be able to access coverage. The state would implement an open enrollment period for most adults that would span three months prior to and three months following an eligibility expiration. Failure to renew eligibility would result, for most adults, in a six-month lock-out period.

Making very low-income enrollees who cannot pay premiums wait 60 days for coverage makes little sense. They will not be able to get prescriptions and may not be able to get other health services they need, and to the extent they do get care providers will not be able to receive reimbursement. Some patients may seek care in costly emergency room settings or defer needed care, potentially resulting in higher costs once they actually do receive coverage. Likewise, the lock-out provision for failure to re-enroll in the open enrollment time period would also be counterproductive. CMS has already found that a similar request from Indiana is not consistent with the objectives of the Medicaid program, rightly recognizing that many low-income individuals face challenges in completing the renewal process (e.g., issues of language access and problems receiving mail). CMS also found that mental illness or homelessness can create barriers to completion of the renewal process and that gaps in coverage that would result from a lockout could lead to harm. Disrupting continuity of coverage will result in more fragmented care, and is at ultimately at odds with Kentucky's stated goals of promoting preventive care and deeper engagement of Medicaid enrollees in the health system.

### **Work Requirements**

The state proposes to institute a work requirement that would start at five hours per week after three months of eligibility and scale up to 20 hours per week after a year of Medicaid participation. Failure to comply with the requirement by doing paid or voluntary work or by participating in educational or community programs, would result in loss of coverage for most enrollees (children, pregnant women, and some other individuals would be exempt). This proposal would reduce access to health care and unravel the gains made by the state's Medicaid expansion, without any real benefit or gain in employment. The experience of the Temporary Assistance for Needy Families (TANF) program demonstrates that imposing a work requirement

for Medicaid would lead to the loss of health coverage for substantial numbers of people who are unable to work or face major barriers to finding and retaining employment. Moreover, research shows that work requirements typically result in little or no long-term gain in employment. While the proposal includes exemptions for people who cannot work, these would be administratively difficult to administer, and the TANF experience suggests that implementing the requirement would be costly for the state — dollars that could better be used to provide actual health coverage.

### **Premium Support**

The state proposes to build, under the waiver, on its existing Health Insurance Premium Payment (HIPP) by requiring eligible members who have access to employer-sponsored insurance to enroll in the employer plan after the first year of eligibility. This requirement would be extended to families with children of who are eligible for CHIP, even if the parents' income exceeds 138 percent of FPL. While this could be a reasonable approach to provide coverage for some portion of enrollees, the state could implement it under existing state plan authority, without a waiver. To the extent that the proposal is coupled with a reduction in benefits that mirrors the restructured benefit package for the rest of the expansion population, it raises the same problems noted in the discussion above. Instead of allowing premiums and limiting benefits, CMS should work with the state to fashion an approach that builds on the existing HIPP program operated under the state plan.

Again, I urge you to reject Kentucky's proposal to implement these harmful changes to its Medicaid program, and hope that you will be able to work with the state to either continue its existing program or fashion a plan that does not endanger the important gains in coverage that the state has made so far. If you have questions about our comments, please contact Sarah Nolan at 202-730-7606.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Frane", with a blue dot at the end of the signature.

Leslie Frane  
Executive Vice President